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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,042	07/18/2002	Jorg Peter Schur	von Kreisler.022	9726

110 7590 08/01/2003

DANN, DORFMAN, HERRELL & SKILLMAN  
1601 MARKET STREET  
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PHILADELPHIA, PA 19103-2307

EXAMINER
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LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 08/01/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.	070042	Applicant(s)	Schyr
Examiner	Milley	Group Art. Unit	166 6

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

**Status**

Responsive to communication(s) filed on 7/18/02.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

Claim(s) 1-48 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) \_\_\_\_\_ is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) 1-48 are subject to restriction or election requirement.

**Application Papers**

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119 (a)-(d)**

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

**Attachment(s)**

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892

Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948

Other \_\_\_\_\_

**Office Action Summary**

This application contains the following species of the generic invention, and the following inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1. In accordance with 37 CFR 1.499 applicants are required, in reply to this action, to elect a single invention to which the claims must be restricted:

Group I , claims 1-48 surface composition

Group II , claims 1-48 incorporation

Group III , claims 1-48 surface and incorporation

Claims 1-48 are generic to a plurality of disclosed patentably distinct species comprising one article: wood, timber, wood products, textiles and textile raw materials, plastics and rubbers, airfilters, wool, cotton, natural and mineral insulation and sealant materials, construction materials made of mineral and natural substances, filters, soils and fertilizers, animal-derived raw materials, paints, lubricants, adhesives, detergents and cleaning agents. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Art Unit: 1616

Claim 44 is generic to a plurality of disclosed patentably distinct species comprising additive species: emulsifiers, stabilizers, antioxidants, preservatives, solvents and/or carriers. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Claims 1-48 are generic to a plurality of disclosed patentably distinct species comprising ultimate species combination of 2 or more Gras agents: for example one of claim 9 alcohols: benzyl alcohol, acetoin, ethyl alcohol, propyl alcohol, isopropyl alcohol, propylene glycol, glycerol, n-butyl alcohol, iso-butyl alcohol, hexyl alcohol, L-menthol, octyl alcohol, cinnamyl alcohol, α-methylbenzyl alcohol, heptyl alcohol, n-amyl alcohol, iso-amyl alcohol, anisalcohol, citronellol, n-decyl alcohol, geraniol, β,γ-hexenol, lauryl alcohol, linalool, nerolidol, nonadienol, nonyl alcohol, rhodinol, terpineol, borneol, clineol, anisole, cumanyl alcohol, 10-undecene-1-ol, 1-hexadecanol and one ultimate species of phenol compound: catechol, resorcinol, hydroquinone, phloroglucinol, pyrogallol, cyclohexane, resveratrol, usnic acid, caffeic acid, tannin. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Art Unit: 1616

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Claims 7-12, 21-23, 31-43 are generic to a plurality of disclosed patentably distinct species comprising ultimate derivative compound (c) said GRAS acid (c) is selected from the group consisting of: acetic acid, aconitic acid, adipic acid, formic acid, malic acid, capronic acid, hydrocinnamic acid, pelargonic acid, lactic acid, phenoxyacetic acid, phenylacetic acid, valeric acid, iso-valeric acid, cinnamic acid, citric acid, mandelic acid, tartaric acid, fumaric acid, tannic acid. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Claims 10-19 are generic to a plurality of disclosed patentably distinct species comprising added GRAS ultimate compound; of claim 9. Applicant is required under 35

U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Claims 20-43 are generic to a plurality of disclosed patentably distinct species comprising ultimate species, of claim 20 is elected, of GRAS flavor alcohols, including benzyl alcohols, including benzyl alcohol, 2-phenylethanol, 1-phenylethanol, cinnamyl alcohol, hydrocinnamyl alcohol, 1-phenyl-1-propanol and anisalcohol, n-butyl alcohol, iso-butyl alcohol, hexyl alcohol, L-menthol, octyl alcohol, heptyl alcohol, n-amyl alcohol, iso-amyl alcohol, anisalcohol, citronellol, n-decyl alcohol, geraniol,  $\beta,\gamma$ -hexenol, lauryl alcohol, linalool, nerolidol, nonadienol, nonyl alcohol, rhodinol, terpineol, borneol, cineol, anisole, cumanyl alcohol, 10-undecene-1-ol and 1-hexadecanol allicin, triacetin, potassium acetate, sodium acetate and calcium acetate: and/or said hydrophilic aldehyde [( $h_h$ )] is selected from the group consisting of furfural, propionaldehyde and vanillin. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

The inventions and species listed as Groups I-V do not relate to a single inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2 they lack the same or corresponding special technical features for the following reasons:

The special technical features are:

Treating articles by surface application, incorporation, or both, with known compounds, by known methods, into known articles of commerce. The application methods are not novel, the compounds are not novel, and the combination of compounds applied to surfaces, incorporated or both is known and within the skill of the artisan to attain.

Since this application is filed under Rule 371, the legal authority is PCT Rule 13.2, Annex B, part 1(f) "Markush Practice"; PCT Rule 13 and 35 U.S.C. § 372, rather.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

Art Unit: 1616

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 308-4556 for regular communications and 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd  
July 24, 2003



NEIL S. LEVY  
PRIMARY EXAMINER